THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10043 of 2007

19.6.2007

Between:

G.Vijaya Reddy, S/o.late Neelakanta Reddy
And others

… Petitioners

AND

The Mandal Revenue Officer/Tahsildar,
Himayathnagar Mandal, Hyderabad

… Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10043 of 2007

ORDER:

Petitioners, who are eight in number, seek a writ of Mandamus declaring the action of the sole respondent, namely, Tahsildar, Himayath Nagar Mandal, Hyderabad, in interfering with the construction of the petitioners in premises No.3-2-848/1/1 to 19, Kacheguda main Road, Hyderabad, as illegal and arbitrary and for a consequential direction restraining the Tahsildar from interfering with the construction.

The case has a checkered history. It is however not necessary to go into various events leading to filing of the writ petition. The brief fact of the matter is as follows. The petitioners are allegedly successors of late G.Neelakanta Reddy, who was a legatee under registered Will dated 28.7.1969 under which he inherited the property bearing No.3-2-848/1/1 to 19, Ward No.3, Block No.2, admeasuring 1003 Sq.yards (838.60 Sq.mts). They obtained building permission from the Municipal Corporation of Hyderabad (MCH) vide permit No.1138/64 File No.0720/ CSC/TP3/2004, dated 06.2.2007, for construction of sub-cellar, cellar, parking, ground and four upper floors (commercial complex). They also paid a sum of Rs.4,47,276/- to MCH vide challan No.2170/2, dated 20.9.2006. They also entered into development agreement and General Power of Attorney (GPA) with M/s.Sree Maheshwari Constructions. The construction was commenced. The Tahsildar went to the premises on 30.5.2007 and directed to stop construction. It is also alleged that the Revenue Inspector under the instructions of Tahsildar along with half-a-dozen personnel came to the construction site and took away 90 GI sheets worth Rs.80,000/-. Petitioners were not given any notice nor any order was passed giving reasons for preventing construction.

It appears that the Tahsildar was emboldened by the fact of a land grabbing case being LGC No.52 of 2004 filed before the Special

Court constituted under Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, against the petitioners and one Seth Ghansiram Gopi Kishan, Honorary Secretary of Badruka Educational Society (BES). Be it noted that the said LGC was filed by the Tahsildar, Himayath Nagar Mandal, for declaration that the land comprised in T.S.No.2 including the land, which allegedly belonged to the petitioners as Government land and for eviction of the petitioners and another. The case is still pending. When the Tahsildar was using her office to stop the construction there was neither prohibitory order nor orders of *status quo* passed by the Special Court. Indeed, it is brought out that interlocutory application being I.A.No.1271 of 2006 was filed by the Tahsildar for injunction restraining only Seth Ghansiram Gopi Kishan, Honorary Secretary of BES, from proceeding with the construction. No such application was filed against the petitioners, but still the Tahsildar went to the site, stopped the construction and her staff took away the construction material like GI sheets.

The counter affidavit is filed by the Tahsildar sworn on 13.6.2007. The allegation that she visited the construction site and stopped the construction is not denied. The allegation that the Revenue Inspector and other staff took away 90 GI sheets is also not denied. The case is, however, opposed on the ground that the land in T.S.No.2, Block-L, Ward No.191, is Government land, which was classified as Abadi land vide orders of the Government in G.O.Ms.No.1039, Revenue (R) Department dated 13.9.1972. It is also alleged that the petitioners grabbed the land in T.S.No.2 and that on verification from the office of the Special Officer and Competent Authority, Urban Land Ceiling, Hyderabad, it is revealed that petitioners 1 and 2 were declared as non-surplus holders to an extent of 898.08 Sq.mts forming part of T.S.No.3 Ward-191, Block-L, whereas the petitioners allegedly started construction in the land in T.S.No.2. These are the averments made in the counter affidavit in justification of the visit of the Tahsildar to the construction site of the petitioners and stopping construction.

A detailed reply affidavit is filed denying the allegation of the Tahsildar that an order was passed in I.A.No.1271 of 2006 in LGC No.52 of 2004. It is also stated that no interlocutory application for injunction is filed against the petitioners and that order was passed by the Special Court on 14.6.2006 recording the undertaking given by Ghansiram Gopi Kishan, Honorary Secretary of BES, and that no such order was passed against the petitioners.

After hearing learned Counsel for the petitioners and learned Assistant Government Pleader for Revenue (General-T), this Court is not inclined to go into the questions whether T.S.No.2 is Government

Abadi land, whether petitioners 1 and 2, who are declared as non-surplus land holders, obtained building permission for the said land and whether they are making construction in T.S.No.2. These questions are probably primary as well as main issues in LGC No.52 of 2004. The fact however remains that as on today, the Tahsildar, Himayath Nagar Mandal, who is applicant in LGC No.52 of 2004, did not even file any interlocutory application for injunction restraining the petitioners from proceeding with the construction nor brought it to the notice of the MCH regarding the alleged dispute over the land being in T.S.No.2 or T.S.No.3. Learned Assistant Government Pleader however during the course of arguments brought to the notice of this Court about the correspondence between the Tahsildar, Himayath Nagar Mandal, and the Commissioner of Greater Hyderabad Municipal Corporation (GHMC). As this correspondence is not even mentioned in the counter affidavit, much importance need not be given to the same. Insofar as the action of the Tahsildar in virtually prohibiting the petitioners from proceeding with the construction in spite of there being no injunction order from the Special Court before whom the LGC is pending, is an action which cannot be sustained in law. By the time the Tahsildar resorted to such *ex facie* illegal action, LGC No.52 of 2004 was pending and though I.A.No.1271 of 2006 was moved, the same was not against the petitioners but only against the Honorary Secretary of BES. From this, a reasonable inference can be drawn that whatever action taken by the Tahsildar is illegal. It is high-handed action in gross abuse of power. Be it noted that when once the MCH granted permission to the petitioners subject to the powers of the Corporation under Hyderabad Municipal Corporations Act, 1955 (HMC Act, for brevity) they have every right to proceed with the construction in accordance with building plan submitted along with the application for building permission. Any encumbrance or fetter on their right would certainly be arbitrary and contrary to the provisions of HMC Act.

For the above brief reasons, this Court holds that the petitioners cannot be prevented from proceeding with the construction of the commercial complex as per the building plan and building permission granted by the MCH, unless and until any Court or Forum prohibits such construction. As the petitioners are prevented by the Tahsildar from legitimately exercising their right under law as well as under building permission, the Tahsildar should be mulcted with exemplary costs. However having regarding to the tenor of the counter affidavit in which the allegations are not seriously disputed, this Court is of considered opinion that an amount of Rs.2,000/- (Rupees Two Thousand only) would be proper costs. There shall be an order to that effect. The costs shall be paid by the Tahsildar personally to the

petitioners. This Court also observes that it is always open to the respondent to approach the Special Court and obtain necessary orders if so advised.

The writ petition with the above observations and directions is accordingly allowed with costs.

_____

(**V.V.S.RAO, J**)

June 19, 2007.
YS